In The

Supreme Court of the United States

———o———

——— Term, 1977

No. ———

———o——— 76-1742

WILLIAM ALBERT HALTERMAN,

Petitioner,

vs.

THE STATE OF IOWA,

Respondent.

———o———

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

———o———

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

———o———

Petitioner prays that a writ of certiorari issued to review the judgment of the Supreme Court of the State of Iowa, entered in the above-entitled case on April 15, 1971, and the denial of the Petition for Rehearing, entered herein on the 11th day of March, 1977.

———o———

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Iowa sustains the judgment of the Warren County District Court and is printed in the Appendix.

—o—

JURISDICTION

The judgment of the Supreme Court of the State of Iowa was entered on January 19th, 1977, and the Supreme Court of Iowa denied petitioner's Petition for Rehearing on the 11th day of March, 1977. The jurisdiction of this Court is invoked under 28 U. S. C. 1257.

—o—

QUESTION PRESENTED

Whether or not the petitioner was denied his right to a fair and impartial trial under the Sixth and Fourteenth Amendments to the Constitution of the United States by the District Court's failure to grant a change of venue.

—o—

STATEMENT OF THE CASE

The defendant, William Albert Halterman, was indicted for the crime of burglary with aggravation on January 8th, 1975. On April 9th, 1975, petitioner filed a motion for change of venue and on May 15th, 1975, the trial court overruled petitioner's motion for change of venue. On September 25th, 1975, petitioner was found guilty of the crime of burglary with aggravation and on October

20th, 1975, petitioner filed a motion for a new trial alleging that the petitioner had not received a fair and impartial trial under the provisions of the Constitution, said motion being denied.

The petitioner was sentenced to ten years imprisonment.

On January 19th, 1977, the Supreme Court of the State of Iowa affirmed the District Court.

—o—

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Supreme Court of the State of Iowa in affirming the District Court judgment has rendered a decision which violates the constitutional rights of the petitioner under the Sixth and Fourteenth Amendments of the Constitution of the United States.

—o—

CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX

IN THE SUPREME COURT OF IOWA

(Filed January 19, 1977)

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58891

STATE OF IOWA,

Appellee,

vs.

WILLIAM ALBERT HALTERMAN,

Appellant.

Appeal from Warren District Court—Robert O. Frederick and Van Wifvat, Judges.

Defendant appeals from judgment entered on a jury verdict finding him guilty of burglary with aggravation.—Affirmed.

Martin R. Dunn, of Lawyer, Lawyer, Dunn & Jackson, of Des Moines, for appellant.

Richard C. Turner, Attorney General, John Criswell, County Attorney, for appellee.

Submitted to Moore, C. J., Rawlings, LeGrand, Reynoldson, and Harris, JJ.

PER CURIAM:

Defendant, William Albert Halterman, appeals from judgment on a jury verdict finding him guilty of burglary

with aggravation (§§ 708.1-708.2, the 1973 Code). We affirm.

January 8, 1975, Halterman was charged with the above stated offense. He thereupon entered a not guilty plea.

April 9, 1975, defendant petitioned for a change of venue, Code ch. 778, to which the State filed resistance. During the May 5, 1975, hearing thereon he introduced 20 like affidavits which stated, in part:

> "That I have read or heard of the alleged facts contained in the newspaper articles attached hereto and marked Exhibit A and that further, I am aware that * * * Bill Halterman * * * and others named in Exhibit A have been charged by the Warren County Grand Jury with the crime of burglary with aggravation.
>
> "That I have discussed with other people this case and have heard from others that there are allegations and rumors throughout Warren County to the effect that the above-named individuals, without cause or justification, went to the mobile home of Mr. & Mrs. James Tyler on or about the 1st day of January, 1975, armed with weapons variously described as clubs, crow bars, etc.; broke into the mobile home; and beat and assaulted all of the occupants of said mobile home, including women and children.
>
> "That it has further come to my attention that the occupants of said mobile home have spread the allegations and rumors and have expressed opinions that all of the Defendants are guilty."

Attached to these affidavits were copies of two newspaper articles concerning the involved incident. Although identity of these publications is not given, they were clearly confined to news media reporting which ordinarily accom-

panies an event such as this. See State v. Albers, 174 N. W. 2d 649, 652 (Iowa 1970).

May 15, 1975, trial court overruled defendant's change of venue petition.

October 20, 1975, a new trial motion, based on similar grounds, was also denied.

The basic and controlling contention here made in support of a reversal is that trial court erred in overruling defendant's change of venue petition and his same basis motion for a new trial.

The law in this area, well stated in the factually comparable case of State v. Dague, 206 N. W. 2d 93, 94-95 (Iowa 1973), need not be here repeated.

Defendant asserts, however, "rumors are by nature somewhat indefinite and can rarely be shown by specific facts of communication". We recognized in *Dague* that factual recitals will be limited where grounds for the motion are not readily susceptible to a detailed statement of facts. 206 N. W. 2d at 95. But here any factual recitals attempted are based on information and belief, lacking requisite discernible particularity.

Although a change of venue might well have been granted in this case, our independent evaluation of the record persuades us that trial court's rulings, in each involved instance, were within the range of permissible discretion.

AFFIRMED.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF FOR RESPONDENT IN OPPOSITION

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In The

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Iowa Supreme Court, *State v. Halterman,* No. 58891 (filed January 19, 1977) is set forth in the Appendix to the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Was Petitioner denied a fair and impartial trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution because of trial court's refusal to grant a change of venue?

STATEMENT OF THE CASE

The Petitioner, William Albert Halterman, was indicted for the crime of burglary with aggravation on January 8, 1975. On April 9, 1975, Petitioner filed a motion for a change of venue. On May 5, 1975, the Warren County District Court, the Honorable Van Wifvat, Judge, conducted a hearing on the motion and, on May 15, 1975, overruled the motion. On September 25, 1975, Petitioner was found guilty of the crime of burglary with aggravation and on October 20, 1975, Petitioner filed a motion for a new trial, setting forth the denial of the change of venue as a basis therefor. The Honorable Robert O. Frederick, Judge, denied that motion.

The Petitioner was sentenced to imprisonment for ten years.

On January 19, 1977, the Supreme Court of the State of Iowa affirmed the judgment of the Warren District Court.

ARGUMENT

Whether the community atmosphere is sufficiently prejudicial to warrant granting a motion for a change of venue is a mixed question of fact and law. *Reynolds v. United States,* 98 U.S. 145, 156 (1879). The Court has held that it will not set aside the trial court's findings on this question unless error is manifest. *Id.* This holding has been reiterated in later cases. *Holt v. United States,* 218 U.S. 245 (1910); *Spies v. Illinois,* 123 U.S. 131 (1887); *Hopt v. Utah,* 120 U.S. 430 (1887). See *Irvin v. Dowd,* 366 U.S. 717, 723-724 (1961). Each case depends upon its own merits, and the defendant has the burden of proving error. *Reynolds,* supra at 157; *Irvin,* supra at 723; *Estes v. Texas,* 381 U.S. 532, 542 (1965); *Sheppard v. Maxwell,* 384 U.S. 333, 352 (1966).

The great weight given to determinations made by trial courts requires denial of the petition for a writ of certiorari. Petitioner presents no evidence to this Court that was not before the trial court when the rulings on the motion for a change of venue and motion for a new trial because of the failure to order the venue change. Two judges of the Warren County District Court independently examined the evidence and concluded that the motions should be denied.

The Honorable Van Wifvat, Judge, denied the motion for a change of venue, stating:

> "The Court does not feel Defendants have met their burden of proof. The recitals in the Affidavit are no more than what appears as a public record in the minutes of testimony attached to the charge which has been on file since January 8, 1975. The question on

the trial will be whether the recitals are fact or not and whether Defendants are guilty. Nothing in the record shows by sufficient quantum that the facts, if they be facts, and the rumors, if they be facts, have reached enough disinterested persons in the county who may be jurors upon the trial of the case and that it would not be certain that Defendants could not reasonably expect a fair trial in this County."

The Honorable Robert O. Frederick, in denying the motion for a new trial, found:

"... that during the voir dire examination of the jury panel in this case there was no indication on the part of any of the jurors that they did in fact have a knowledge of this case or that there was any undue amount of publicity."

The Iowa Supreme Court reviewed these decisions *de novo* and affirmed the judgment of conviction. Petitioner asks this Court to substitute its judgment for that of the Iowa trial and appellate courts without even the barest allegation of manifest error.

The Fifth Circuit Court of Appeals was presented with a similar situation in *Mayo v. Blackburn,* 250 F. 2d 645 (5th Cir. 1957), cert. denied 356 U. S. 938, reh. denied 356 U. S. 978 (1958). In that case, Blackburn submitted the same evidence to the federal court in support of his habeas corpus petition that he had submitted to the Florida trial and appellate courts in support of his motion for a change of venue and his appeal based on the denial of the motion. The District Court granted the writ, but the Court of Appeals reversed, stating:

"Whether the adverse publicity prevented the appellee from securing a fair trial was a question primarily addressed to the judgment of the trial court. There was more than substantial evidence to support its

decision. It properly accorded weight to the examination of the jurors on voir dire and to the lack of difficulty in choosing a jury. (Citation) It was on the ground at the time of the trial; it saw and heard the voir dire examination of the jurors; it was in a much better position to know the local sentiment and to hear and decide the motion for change of venue than was the federal district court." 250 F. 2d at 648.

As *Mayo v. Blackburn* suggests, a reviewing court should place great weight on a trial court's resolution of the question of the existence of prejudice and should refuse to overturn that decision on the basis of the same evidence where the trial court's consideration was not arbitrary and capricious. The trial court in the instant case gave full consideration to the affidavits of prejudice and to the voir dire examination in ruling on the motions for change of venue and a new trial. Petitioner points to nothing in the record which suggests that the Iowa courts were manifestly in error in their evaluation of these factors. Therefore, this Court should refuse to re-examine the same record and should deny the writ.

This is not a case in which prejudices may be presumed as in *Rideau v. Louisiana,* 373 U. S. 723 (1963), *Estes v. Texas,* supra, or *Sheppard v. Maxwell,* supra. This presumption will be raised only "where the general atmosphere in the community or courtroom is sufficiently inflammatory." *Murphy v. Florida,* 421 U. S. 794, 802 (1975). In *Rideau, Estes,* and *Sheppard,* there was heavy media saturation of the community with highly antagonistic material and/or media disruption of the courtroom itself. No such conduct occurred in Petitioner's trial.

Cases in which the presumption of prejudice is raised are rare. Even trials where there is extensive, largely

adverse publicity do not necessarily reach this level, as the Watergate trials illustrate. The quantity and overall hostility of the publicity of both facts and rumors about the crimes, their investigation, and the trials resulting therefrom cannot be disputed. The trials were held in the District of Columbia, center of this publicity, and yet the District of Columbia Circuit Court has repeatedly affirmed the convictions of those involved notwithstanding the defendants' claims of actual and presumptive prejudice. *United States v. Chapin,* 515 F. 2d 1274 (D. C. Cir. 1975); *United States v. Haldeman,* — F. 2d —, 20 Crim. L. Rep. (BNA) 2104 (D. C. Cir. October 12, 1976) (en banc), cert. denied — U. S. — (1977). In both cases, the Court pointed to the facts that most of the publicity consisted of straightforward, unemotional factual accountings and that an extensive voir dire of the prospective jurors established that an impartial jury could be and was selected.

It follows *a fortiori* from *Chapin* and *Haldeman* that Petitioner's case does not come within the ambit of the doctrine of presumed prejudice. Only two newspaper articles and no electronic media reports were cited by Petitioner, both strictly factual accountings based upon the public record of the case. The rumors are not specifically set forth, but they appear to have a similar basis. The voir dire established to the satisfaction of the trial judge that no prejudice existed on the part of the jurors.

Since the local atmosphere was not such as to allow a presumption of prejudice, Petitioner must demonstrate actual prejudice of the jurors. The test of actual prejudice is not whether the jurors had any preconceived notion as to the facts of the case or the guilt or innocence of the

accused, but rather is whether the jurors could lay aside their impressions and opinions and render a verdict based on the evidence presented in court. *Irvin v. Dowd,* supra at 722-723.

Both the trial court and the Iowa Supreme Court found that the allegations in the affidavits were not set forth with sufficient specificity to allow the courts to determine their sufficiency. *State v. Halterman,* No. 58891 (Iowa Supreme Court, filed January 19, 1977), reprinted in Appendix to Petition for Writ of Certiorari. See *State v. Dague,* 206 N. W. 2d 93 (Iowa 1973); 22 C. J. S. Criminal Law § 206 at 537-538 (1961). The Iowa Supreme Court also found that the news reports attached to the affidavits were of the kind which "ordinarily accompanies an event such as this." *State v. Halterman,* supra. These reports were in no way inflammatory or antagonistic; they merely restated facts which were of public record, a practice this Court has approved. *Sheppard v. Maxwell,* supra at 350. See *Nebraska Press Association v. Stewart,* 427 U. S. 539 (1976).

In cases of this type in the past, the nature of the publicity has been considered an important factor. Where the publicity has been confined mainly (but not necessarily exclusively) to factual accounts, this Court has not found prejudice. *Stroble v. California,* 343 U. S. 181 (1952); *Murphy v. Florida,* supra; *Beck v. Washington,* 369 U. S. 541 (1962). These cases are dispositive of any due process claim based on the allegations contained in the affidavit and warrant denial of the writ.

The absence of a finding of prejudice in the voir dire examination buttresses this conclusion. The results of the

voir dire and the ease of selecting a jury has been the second factor used by this Court to determine the absence of prejudice. *Beck v. Washington,* supra at 556-558; *Murphy v. Florida,* supra at 802-803; Cf. *Irvin,* supra at 726-727 (difficulty in selecting impartial panel is evidence of prejudice). Petitioner did not request the trial court to make a transcript of the voir dire proceedings, so it will be impossible for ths Court to independently judge the results. However, the trial court found that the jurors had no *knowledge* of the case prior to trial and denied the motion for a new trial on that basis. Since this Court has no means to review that decision, it must be considered dispositive. Any contrary finding would be based solely on speculation and would certainly be insufficient to merit the granting of a petition for a writ of certiorari.

CONCLUSION

The Iowa Supreme Court did not err in affirming Petitioner's conviction. Neither the affidavits of prejudice nor the voir dire examination revealed any antagonistic sentiment which would have made it uncertain that Petitioner could reasonably have expected a fair trial in Warren County, Iowa.

This case is not one "[w]here a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court." Rule 19 (1) (a), Rules of the United States Supreme Court. The issue of pretrial publicity and a fair trial has been

considered on numerous occasions by this Court, and several convictions have been affirmed when obtained in an atmosphere far more antagonistic than that of Petitioner's trial. This Court should deny the petition for a writ of certiorari in this case.

Respectfully submitted,

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Ray Sullins, Assistant Attorney General for the State of Iowa, hereby certify that on the 5 day of July, 1977, I mailed three (3) copies of Brief for Respondent in Opposition, correct first class postage pre-paid, to:

Martin R. Dunn
2940 Ingersoll Avenue
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I further certify that all parties required to be served have been served.

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